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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW,
Room TWB-204
Washington, DC 20554

*Re: Ex Parte, IB Docket No. 04-398, The Effect of Foreign Mobile
Termination Rates on U.S. Customers.*

Dear Ms. Dortch:

AT&T Corp. ("AT&T") submits the attached appeal application recently filed by Vodafone in the High Court of New Zealand for inclusion in the record of this proceeding. Vodafone's application seeks judicial review of the final report issued on June 9, 2005 by the New Zealand Commerce Commission ("ComCom") recommending to the New Zealand Minister of Communications that mobile termination services should be regulated as a "designated access service."¹ The ComCom final report finds, among other things, that there is "a national wholesale market for mobile termination services on each mobile network," that "mobile network operators are subject to limited competition in the wholesale market for termination services on their respective networks," and that regulation of mobile termination would provide substantial benefits.² Vodafone contends in its appeal that the ComCom report is "wrong in law," that ComCom should reconsider its recommendation, and that "the Minister should not accept the Commission's recommendation and should not recommend to the Governor General that he makes mobile termination services a designated service."³

¹ New Zealand Commerce Commission, *Final Report of the Schedule 3 Investigation Into Regulation of Mobile Termination*, Jun. 9, 2005.

² *Id.* at 38, 42, 162-163.

³ Vodafone New Zealand Limited, Statement of Claim in Application for Review, Jun. 29, 2005, High Court of New Zealand, Auckland Registry, Commercial List, Civ: 2005.404-3429, Jun. 29, 2005 (Attachment 1 hereto), at 12. Telecom New Zealand, the other leading mobile operator in New Zealand, filed an application for judicial review of the ComCom final report on July 1, 2005.

Before this Commission, however, Vodafone contends that this Commission should not take action to reduce foreign mobile termination rates and should allow foreign regulators to address this issue. For example, in its Reply Comments in this proceeding filed on February 14, 2005, Vodafone contends that concerns about “the reasonableness of mobile termination rates in a CPP environment . . . are appropriately the subject of domestic regulation” and that “foreign regulators are, in fact, taking action here by addressing cost modeling issues themselves.”⁴ Indeed, in its Comments filed on January 15, 2005, Vodafone cites the ComCom proposal for greater regulation of mobile termination in New Zealand as a specific example of the foreign regulation on which it contends the Commission should rely.⁵ According to Vodafone, “[i]n the absence of discrimination as to the outcomes from regulatory or other commercial proceedings, *the interests of U.S. consumers will be fully safeguarded by the actions undertaken by regulators within the foreign markets.*”⁶

As AT&T has described, these claims by Vodafone and other foreign mobile carriers fail to recognize that only a very small number of foreign regulators have taken effective action to reduce rates toward non-discriminatory and cost-based levels.⁷ Moreover, Vodafone itself is frequently a leading opponent of foreign regulatory action to reduce rates – as demonstrated by its recent court application in New Zealand. A New Zealand press report cited by Dow Jones states that Vodafone’s appeal “could put the process back to ‘square one.’”⁸ The report quotes ComCom as stating that the appeal could take “week[s], months or longer.”⁹ The report also notes “that if the legal proceedings stretch past the looming New Zealand general election, which must be held by Sept. 24, Vodafone and its rival Telecom Corp. may get another chance to make their case because the opposition National party has said it will look at the debate from a fresh perspective.”¹⁰

This effort by Vodafone to have its cake and eat it too by preventing the implementation in New Zealand of the very foreign regulation with which it attempts to shield its high foreign mobile termination rates from action by this Commission follows similar foreign court appeals by Vodafone and other foreign mobile carriers that have delayed the implementation of foreign regulatory measures on mobile termination in Australia, Ireland, Sweden and the UK.¹¹ This new appeal by Vodafone highlights the

⁴ Vodafone Reply at ii & 9.

⁵ Vodafone Comments at 12 (“a similar proposal [for regulation of mobile call termination rates] is proposed in New Zealand”) & n.21 (citing ComCom’s Draft Report).

⁶ Vodafone Comments at 11 (emphasis added).

⁷ See Letter dated June 24, 2005 to Ms Marlene Dortch, FCC, from James Talbot, AT&T.

⁸ Dow Jones, *Vodafone NZ’s move may set mobile regulation back*, Jul. 5, 2005 (citing a New Zealand Business Herald newspaper report).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See e.g., Irish Times, *Vodafone, Meteor and O2 lodge appeal*, Mar. 23, 2005 (the appeals “will lead to a lengthy delay in the implementation of the recent ruling by the Commission for Communications Regulation” requiring mobile operators to open their networks to ‘virtual operators’); Vodafone Press Release, *Vodafone Sweden Appeals Against PTS’ Decision*, Jul. 26, 2004 (announcing its appeal of the Swedish regulator’s classification of Vodafone as possessing Significant Market Power and the regulator’s decision to regulate Vodafone’s interconnect fees on the grounds that “PTS does not possess the expertise

significant obstacles that are often faced by foreign regulators that attempt to reduce foreign mobile termination rates and further underscores the importance of action by this Commission to establish new international settlement rate benchmarks for mobile termination.

This *ex parte* letter and attachment are submitted for inclusion in the record of the above-referenced proceeding.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "James Talbot". The signature is fluid and cursive, with the first name "James" and last name "Talbot" clearly distinguishable.

James J. R. Talbot
Senior Attorney

Cc: Donald Abelson
James Ball
Anna Gomez
Francis Gutierrez
Mark Uretsky

required to perform this kind of market and competition analysis"); Vodafone News Release, *Vodafone appeals ACCC Final Decision over "legislative powers,"* Jul. 27, 2004 ("Vodafone Australia today commenced proceedings in the Federal Court of Australia challenging the power of the ACCC to set prices as part of its Final Decision regarding mobile termination rates."); Daily Telegraph (UK), *Vodafone leads operators in challenging Ofcom price cuts*, Jan. 23, 2003.